SODOMITES ON TRIAL

A Review of the Facts, History, and Legal Status of Sodomy and Sodomites

by

Charles A. Weisman

---- PREFACE ----

Ever since the destruction of Sodom and Gomorrah the act of sodomy has been known as the infamous crime against God and nature.

The judgment and punishment God rendered on that day, and the corresponding prohibitive law and death penalty He ascribed for the sodomite, established a precedent which has been recognized for several thousand years.

It thus is amazing and shocking that millions now have been convinced or conditioned into accepting the lifestyle of the sodomite or "homosexual."

Many now believe that the lifestyle of the sodomite should be protected like their own, that God loves the sodomite just as He loves them, and that society and government have been "uncivilized" in their condemnation of the sodomite.

When a people forget their God and their history, they are susceptible to be controlled and debauched to any imaginable degree.

So what is the real case against the sodomite? Read for yourself this booklet and share it with others, so that the people of the land may be reawakened to some of the facts, history and law regarding sodomites.

Sodomites on Trial

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CONTENTS

Preface .....back cover
1. An Historical Background 2
2. Nature of Sodomy 3
3. Sodomites in the Bible 5
4. Sodomy in Criminal Law 9
5. Punishment 12
6. Early American Sodomy Laws 14
7. Society and Case History 20
8. Sodomy and the Military 24
9. The Subversive Defense of Sodomy 26

1. AN HISTORICAL BACKGROUND

1. Sodomy ranks as one of the most ancient of illicit activities being found mentioned in the annals of the oldest civilizations. The historical origin of the word 'sodomy' is noted in the famous legal treatise, *"Wharton's Criminal Law:"*

> The term "sodomy" was derived from the ancient city of Sodom which, according to the Bible, was destroyed by fire because of its sexual excesses and perverted practices.[1]

And in a well-known decision by the Court of Appeals of Kentucky, the court likewise identified the origin of the word and crime of sodomy:

> *The word "sodomy" is derived from the city of Sodom, where the crime against nature had its origin, and was universally prevalent until that city was destroyed by the wrath of God.*[2]

2. Outside of the Bible, the earliest legal argument for outlawing homosexual conduct is found in Plato's *Laws* (c. 380 B.C.). Plato argued that such acts undermine the development of desirable masculine traits such as courage and self-control. He also pointed out the proper role of sex for procreation within marriage, and that homosexuality is unnatural because it is sterile. Aristotle expressed similar comments regarding sodomy.

3. Medieval Europe and the Christian Church believed that homosexuals should be put to death by burning, hanging or burying alive, because God, according to the account of Genesis of the fire and brimstone destruction of Sodom and Gomorrah, condemned the inhabitants for their homosexual immorality.

During the Middle Ages in England, the offense of sodomy, along with heresy, blasphemy, witchcraft, adultery and the like, was under the jurisdiction of the ecclesiastical courts. Sodomy

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1 *Wharton's Criminal Law,* 14th Edition, Vol. 3, 1980, sec. 294, p. 75.

2 *Commonwealth v. Poindexter,* 118 S.W. 943, 944, 133 Ky. 720 (1909).

became recognized as an offense by the common law as a result of an early English statute under king Henry VIII (1533), which transferred powers of the ecclesiastical courts to the king's courts. To provide for a clean separation from the Church, and to have the powers identified with the Crown, it adopted the term "buggery" instead of "sodomy" which the Church used and was reminiscent of theology, Sodom and Gomorrah, etc.

The statute was later revived under Elizabeth I (1562), but which confirmed the biblical grounds for the legitimacy of the law. The new statute recited that it was made necessary to combat the prevalence of the *"horrible and detestable vice of buggery, aforesaid, to the high displeasure of Almighty God."*

2. NATURE OF SODOMY

1. In its broadest sense sodomy "is held to include all acts of unnatural carnal (sexual) copulation with mankind or beast."[3] In a wider sense it means "the corruption of morals, the disgrace of human nature by an unnatural sexual gratification, of which reason and decency forbids a more detailed description."[4] Various terms have been used to describe the act of sodomy, as one legal text points out:

> Over the years the offense of sodomy has been characterized as "the crime against nature," "the infamous crime against nature," "the bestial crime against nature," or "the abominable and detestable crime against nature with mankind or beast." Whatever the label, the essence of the crime is clear: an act of deviate sexual intercourse with or without consent.[5]

Other authorities and courts have defined sodomy by terms such as "lewd and lascivious acts,"[6] and was often spoken of

3 *State v. Langelier,* 8 A.2d 897 (Me.-1939).

4 *Murray v. State,* 143 N.E.2d 290, 292 (Ind.-1957).

5 *Wharton's Criminal Law,* 14th Edition, Vol. 3, 1980, sec. 294, p. 76.

6 *State v. Bateman,* 547 P.2d 6, 9, 113 Ariz 107 (1976).

and understood as being "the abominable crime not fit to be named among Christians."[7] At common law "sodomy" is synonymous with the term "infamous crime against nature" and were used interchangeably. Such phrases have been used to include every unnatural carnal copulation. Because of the vile and repugnant nature of sodomy such phrases are used in criminal indictments instead of detailed descriptions:

> On account of the vile and degrading nature of the crime of sodomy it is uniformly held that it is not necessary to describe the offense with the same particularity which is required in other crimes.[8]

2. The existence of the crime was always viewed as an embarrassment to society, and was not fit to be discussed in its details even in statutes or court records. Thus in an appeal to the Supreme Court of Illinois a man charged with sodomy claimed the count was uncertain and insufficient, in that it did not fully inform the defendant of the nature of the offense charged. The Court held the charge was sufficient stating:

> The statute gives no definition of the crime, which the law, with due regard to the sentiments of decent humanity, has always treated as one not fit to be named. It was never the practice to describe the particular manner or the details of the commission of the act, but the offense was treated in the indictment as the abominable crime not fit to be named among Christians. 4 Bl. Comm. 215. The existence of such an offense is a disgrace to human nature.[9]

3. The English jurist **Sir William Blackstone** refers to sodomy or the crime against nature as being against the express law of God. He said it is an offense of "deeper malignity" than rape, a "heinous act," and a "crime not fit to be named."

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7 *Herring v. State,* 46 S.E. 876, 882, 119 Ga. 709 (1904); *State v. Whitemarsh,* 128 N.W. 580, 583, 26 S.D. 426 (1910).

8 *People v. Battilana,* 126 P.2d 923, 928 (Cal. - 1942); *Connell v. State,* 19 N.E.2d 267, 268 (Ind. - 1939).

9 *Honselman v. People,* 48 N.E. 304, 305, 168 Ill. 172 (1897).

3. SODOMITES IN THE BIBLE

1. Since the origin of the word *sodomy* originated from the Bible, it is but logical that we turn to the Bible for the basis of our information on how we are to judge sodomy and sodomites. In Genesis chapter 18 and 19 is recorded the first trial of sodomites. God was the judge, and had sent two witnesses (angels) to see first hand the nature of the conduct of the inhabitants of Sodom and Gomorrah (Gen. 19:1). The inhabitants attempted to sodimize the witnesses God sent, saying to Lot —*"Where are the men which came to you this night? bring them out to us, that we may know them"* (Gen. 19:5). The evidence revealed that there was great "iniquity in the city" (Gen. 19:15), and *"the men of Sodom were wicked and sinners before the LORD exceedingly"* (Gen. 13:13).

The trial disclosed the criminal act of sodomy, the verdict was 'guilty,' and the punishment was death – the entire city and its inhabitants were destroyed by God (Gen. 19:24-25).

Today many would like to have a mistrial declared in this case for the reason that they desire to follow or support this manner of deviant sexual behavior. Thus they try to get 'sodomy laws' repealed and 'gay rights' legislation passed. The struggle against all true law has in effect been a struggle against God and his order.

2. To further suppress the act of Sodomy, God had officially given His people specific laws regarding the regulation of this type of activity. In the book of *Leviticus* is written the following law on immoral sexual conduct:

> *Thou shall not lie with a man as with a woman; it is an abomination.*
>
> *Neither shall you lie with any beast and defile yourself therewith: neither shall any woman stand before a beast to lie down thereto: it is an abomination.*[10]

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10 Leviticus 18:22-23.

3. After issuing the declaration against sodomy and other acts of sexual depravity in Leviticus 18, the Diviner lawgiver announces his reason for these crimes:

> *Defile not yourselves in any of these thing; for in all these the nations are defiled which I cast out before you:*
>
> *And the land is defiled; therefore I do visit the iniquity thereof upon it, and the land itself vomits out her inhabitants (v. 24, 25).*

When the people allow defiled sodomites in their nation it defiles the land like the Canaanites had defiled the land, and God will expel them from the land like He did with the perverted Canaanites, or curse them like he did with Egypt. God was thus warning Israel not to follow the iniquity and perverted ways of such nations otherwise the *"land shall spit you out, as it spit out the [Canaanite] nations that were before you"* (Lev. 18:28). Regarding the practices of the Egyptians and Canaanites, one Bible Commentary says:

> Ancient history gives many appalling proofs that the enormous vices described in this chapter (Leviticus 18) were very prevalent, nay, were regularly practiced from religious motives in the temples of Egypt and the groves of Canaan; and it was these gigantic social disorders that occasioned the decree for the expulsion of the inhabitants of Canaan.[11]

The Canaanites and Egyptians had incorporated the practice of sodomy and other deviant sexual acts into their religion, thus making these acts something to be esteemed and respected, and which could not be socially or politically attacked or countered. This shows the hopeless depth of their moral corruption. God warned Israel not to follow or adopt their perverted ways and not to allow any of their own people to become sodomites:

> *There shall be no whore of the daughters of Israel, nor a sodomite of the sons of Israel.*[12]

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11 Jamieson, Fausset & Brown, *A Commentary on the Whole Bible,* vol. I., p. 86.

12 Deuteronomy 23:17.

4. After God provided the law against sodomy, He provided the punishment for those that practice that "lifestyle." Speaking of sodomy, bestiality, and other defiling acts He stated that, *"whosoever shall commit any of these abominations, shall be cut off from among the people"* (Lev. 18:29). The phrase 'shall be cut off' here quite explicitly means death, not banishment. No language could more strongly indicate the intense loathing and abhorrence for these acts.

A few chapters later God more specifically ascribes the punishment for those guilty of the act of sodomy:

> *If a man also lie with a man as he lies with a woman, both of them have committed an abomination; they shall surely be put to death; their blood shall be upon them.*[13]

The punishment of death was also rendered for other gross acts of sexual misconduct such as bestiality. This act was often connected to sodomy in later civil codes. This most severe of punishments levied by God Himself declares beyond question the unlawful and abominable nature of sodomy.

5. An episode in the book of Kings reveals a time when "Judah did evil in the sight of the LORD." One of the evils is described in the text:

> And there were also sodomites in the land: and they did according to all the abominations of the nations which the LORD cast out before the children of Israel.[14]

The nation's leader, king Rehoboam, had allowed and supported the moral debauchery that plagued the land. As a result we find that in the next verses how God allowed the Egyptians to invade their land and plunder their treasures. Those nations that have freely allowed such activities end up decaying until destroyed. When the immoral and ungodly rule, in the land, practices such as sodomy always flourish. Thus in

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13 Leviticus 20:13.

14 1 Kings 14:24.

Judah, God later raised up kings Asa and Jehoshaphat, who did *"that which was right in the eyes of the LORD."* They both *"took away the sodomites out of the land"* (1 Kings 15:12; 22:46), and there was peace in the land.

6. About two hundred years later the nation once again became plagued with sodomites. God said he was going to bring evil upon Jerusalem because of these sins of the city inhabitants (2 Kings 22:16). But Jerusalem had a righteous ruler, king Josiah, who upon learning of the law of God, had repented and pleaded to God for the city. God had stayed the evil. Thus king Josiah read the law to all the inhabitants and the priests and prophets (2 Kings 23:1-2) The king then had all the idols destroyed, he burned the groves, *"and he broke down the houses of the sodomites"* (2 Kings 23:7). He also slew the priests that allowed all this debauchery.

7. The New Testament changed nothing in regards to God's law and condemnation towards sodomy. It places the "effeminate" or homosexual with idolaters and fornicators and declares that they "shall not inherit the kingdom of God"[15] The New Testament specifically supports the law saying that, *"the law is not made for a righteous man, but for the lawless and disobedient, for the ungodly . . . for them that defile themselves with mankind"* (1 Timothy 1:9-10). Some translations use the word 'homosexual' here. Thus the law was made to restrain and punish the homosexual as much as the murderer.

8. Sodomites were also recognized as 'dogs' in New Testament times. "The price of a dog" (Deut. 23:18) was a figurative expression used to denote the gains of a *kaw-dashé* (Sodomite), who was called *kin-ahee-dos,* by the Greeks, from the dog-like manner in which he debased himself (see Rev. 22:15, where the unclean are distinctly called "dogs").[16]

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15 1 Corinthians 6:9.

16 *The Popular and Critical Bible Encyclopedia,* ed., Samuel Fallows, Chicago, 1908, vol. 3, p. 1602.

9. Paul speaks of those who had become "vain in their imaginations, and their foolish heart darkened" (Rom. 1:21). They denied God's hand in things and rejected His law as they "changed the truth of God into a lie." As a result God "gave them up to uncleanness through the lusts of their own hearts, to dishonor their own bodies between themselves." Because of this they not only became "fools" but homosexuals also:

> *For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature.*
>
> *And likewise also the men, leaving the natural use of the women, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves the due recompense of their error.* [17]

This divine abandonment of these lesbians and homosexuals is strikingly traced to their own acts and thoughts. As they deserted God, God in turn deserted them, letting them follow their debased heart and suffer the consequences thereof. The verses show how their vice was made self-avenging—since they had not honored God, they would now dishonor themselves.

10. Thus the verdict from Scripture is clear. Homosexual activity is an abomination and such deviate sexual conduct is regarded as a capital offense.

4. SODOMY IN CRIMINAL LAW

1. That sodomy is a crime and an immoral wrong has never been seriously questioned until modern times. The question would seem to be one of personal belief and preference only, for when the annals of law are searched there is not one bit of data existing in support of such a position.

2. Sodomy and homosexual activity has for so long been regarded as an unlawful and immoral practice that every

17 Romans 1:25-26.

civilized state has prohibited it in one form or another. As the Supreme Court of Arizona revealed:

> Sodomy has been considered wrong since early times in our civilization. Deuteronomy 23:17, Leviticus 18:22-23; 4 Blackstone, *Commentaries* 215; 2 Pollock & Maitland, *The History of English Law* 556.[18]

Since the fact that sodomy and homosexual conduct has such a long and solid legal foundation as being criminal in nature, those who oppose it as being treated as a crime must resort to sociological and philosophical arguments to nullify the criminalization of sodomy. Due to the obvious illegality of sodomy, such arguments have never held water in the courts. We thus find the following written in *American Jurisprudence:*

> The criminalization of unnatural sexual relations is embedded in common-law history and finds its broader sanction in the settled mores of western civilization. The courts are routinely unimpressed by sociological arguments against the desirability of criminalizing consensual adult sodomy, as well as arguments that the tide of public opinion has turned against such laws.
>
> The prohibition against sodomy and its definition as a crime have been described as of ancient vintage and biblical extraction. The term "sodomy" appears originally as part of the Hebraic law, taking its name from the practices reputedly indulged in by the inhabitants of the cities of Sodom and Gomorrah.[19]

3. All knowledgeable and competent authorities on the law who review and expound upon the issue of sodomy always find that the basis for it as a crime comes from the Bible and laws of nature. Many legal scholars and courts in the past have cited the Bible as an authority for asserting the criminal nature of homosexual conduct. It is also well established that sodomy is a

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18 *State v. Bateman*, 547 P.2d 6, 10, 113 Ariz 107 (1976).

19 *American Jurisprudence*, 2nd ed., vol. 70A, "Sodomy," sec. 1-2, p. 1040.

criminal offense under the common law which was adopted in America. As the U.S. Supreme Court had held:

> Sodomy was a criminal offense at common law and was forbidden by the laws of the original thirteen States when they ratified the Bill of Rights. * * * In fact, until 1961, all 50 States outlawed sodomy. * * * Against this background, to claim that a right to engage in such conduct is "deeply rooted in this Nation's history and tradition" or "implicit in the concept of ordered liberty" is, at best, facetious.[20]

4. American law was greatly influenced by a legal commentary published by **Sir Edward Coke** in 1644. Coke referred to sodomy (or "buggery" as he usually called it) as a sin "amongst Christians not to be named," a phrase he said that was used in the "usual Indictment" for the crime in England. Coke's work on the law stated the following on sodomy:

> If any person shall commit buggery with mankind, or beast; by authority of Parliament this offense is adjudged felony without benefit of Clergy.

"Buggery," Coke continued,

> is a detestable, and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the Creator, and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beast.[21]

5. Laws against sodomy in the colonies and in England were clearly based upon biblical law, as is much of the culture and society of western civilization. The "crime against nature," which sodomy is characterized as, is synonymous with "against the law or will of God." Such is the law surrounding sodomy as further revealed by the Supreme Court of North Carolina:

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20 *Bowers v. Hardwick,* 478 U.S. 186, 192-94, 106 Sup.Ct. 2841, (1986).

21 Edward Coke, *The Third Part of The Institutes of the Laws of England* (London: Printed by M. Flesher, 1644) ch. 10, pp. 58-59. The term "buggery" was a broader term than that of "sodomy," as it meant all unnatural sexual connections.

> In Leviticus 18:22 (King James) there appears this commandment: "Thou shalt not lie with mankind, as with womankind: it is abomination." This commandment has become famous Biblical lore in the story of the destruction by fire and brimstone of the cities of Sodom and Gomorrah where the practice was prevalent. Genesis 19:24-25. From this Biblical genesis to the present day, the crime of sodomy and the crime against nature have been condemned by American and English jurisdictions. The early common law writers called it *peccatum illud horribile, inter christianos non nominandum* (that abominable sin, not fit to be mentioned among Christians). IV *Blackstone's Commentaries* 215-16.[22]

It has been quite obvious to legal writers and courts that the crime of sodomy is based upon God's Law.[23] It is also recognized that the crime of sodomy may be committed in many ways.[24] All manner of homosexual acts between males, as well as sexual relations between two females, are considered to be within the offense of sodomy. The term *"crime against nature"* as known at the common law embraced both sodomy and bestiality, the same as *felony* embraces murder, larceny, etc.[25]

5. PUNISHMENT

1. In the Bible the punishment for sodomy was clearly spelled out — those guilty are to be put to death. Historically, most civil codes adhered to this manner of punishment or assigned the offense to those of the most serious nature.

2. Most of the reputable legal treatises on criminal law recognized the biblical decree of punishment. In the treatise *"The Law of Crime"* it listed the nature of the crime of sodomy under "Felony" and stated:

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22 *State v. Stokes,* 163 S.E.2d 770, 774, 274 N.C. 409 (1968).

23 *Kelly v. State,* 412 A.2d 1274, 1277 (Md.-1980), cites Old Testament.

24 *Fine v. State,* 14 So.2d 408, 410 (Fla.-1943).

25 *State v. Poole,* 122 P.2d 415, 416, (Ariz. -1942).

> In the Mosaic law, persons guilty of the abominations of Sodom were called "Sodomites," and were punished with death. In the Roman law, under the *lex Julia de Adulteriis,* sodomy was punished with confiscation of half of one's goods in case the offender was of the higher class, and with banishment if of the lower class of the people. In the later Empire, the penalty was burning to death. The early English writers, Britton and Fleta, also say it was a capital offense. * * * Sodomy is an infamous crime, and was made a felony by an early English statute (25 Henry 8, ch. 6), and sodomy is said to be a common law felony in this country. The statutes generally make the crime a felony.[26]

3. The Supreme Court of Georgia stated:

> All unnatural carnal copulations, whether with man or beast, seem to come under the notion of sodomy, which was a felony by the ancient common law.[27]

4. The common law had just two basic categories of crimes, misdemeanors and felonies. The most serious and heinous of crimes were felonies most often punished by death, as numerous legal scholars indicate:

> *Mr. Bishop says * * * the detestable and abominable crime against nature was "a felony by ancient common law." Bish. New Cr. Law, par. 503. Blackstone says that under the ancient law the penalty was death by fire, and that Fleta was of the opinion that those convicted of it should be buried alive.*[28]

5. It was also stated by the Supreme Court of New Mexico that at common law sodomy was *"an offense punishable by death."*[29] Thus, by all noted authorities, from the Creator on down, sodomy is a capital offense to be punished by death.

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26 Wm. L. Burdick, *The Law of Crime,* Vol. 3, Fallon Law Book Co., N.Y., 1946, sec. 876, p. 293, sec. 880, pp 297-98.

27 *Herring v. State,* 46 S.E. 876, 882, 119 Ga. 709 (1904); *State v. Start,* 132 Pac. 512, 65 Ore. 178 (1913); citing: 1 Hawkins, *Pleas of the Crown,* p. 357.

28 *State v. Vicknair,* 28 So. 273, 274, 52 La. Ann. 1921 (1900).

29 *Bennett v. Abram,* 253 P.2d. 316, 317, 57 N.M. 28 (1953).

6. EARLY AMERICAN SODOMY LAWS

1. Sodomy laws in early America form a very strong foundation against homosexual conduct and in support of such laws prohibiting and punishing sodomy. Such laws and condemnation of sodomy existed from the earliest times. As the U.S. Supreme Court noted in a recent decision, *Bowers v. Hardwick*, 106 Sup.Ct. 2841 (1986), prohibitions against homosexuality have been a part of American jurisprudence since the colonization of the country.

2. The American colonies were settled by European men and women who were soundly Christian and rejected the humanistic and secularization of society increasingly found in Europe. They sought theological purity in biblical text applied to the affairs of family, society and government. Their laws therefore spoke of "sodomy" or "buggery" as a detestable and abominable sin and a criminal act. Sodomy was primarily a "sin against God," and consequently was said to be "against nature" and regarded as a crime.

A number of early colonial documents speak of sodomy as a sin specifically against marriage, the family, and procreation. Sodomy was seen as a threat against the legally established and enforced social organization of the family and procreation. It thus was thought of as a major crime against the state.

3. In America's first permanent settlement, that of **Jamestown,** is found the first law prohibiting sodomy. A list of laws known as *"Articles, Lawes, and Orders, Devine, Morall, and Martiall,"* which were issued by Sir Thomas Gates, governor of the Jamestown colony in 1610, contained the following prohibition on sodomy:

> No man shall commit the horrible, and detestable sins of Sodomie upon pain of death.[30]

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30 Mary Cable, *American Manners and Morals,* (American Heritage Pub. Co., N.Y., 1969), p. 23.

This law also made murder, adultery, and rape capital crimes. In all the early American colonies, as in England, the sin of sodomy was made one of the highest crimes, penalized by death.

4. The province of **New Netherland** was under Dutch rule up to 1664, when the English took control. In 1613, the law of Holland, which descended from the Roman Emperor Justinian, punished sodomy with death. Several sodomy cases are recorded during this time of Dutch rule. In the earliest codification of laws in colonial America, the code of **Plymouth** in 1636 contained eight offenses punishable by death which included "sodomy."[31]

5. The **Massachusetts Bay Code** of 1641, provided death for heresy, witchcraft, blasphemy, three varieties of murder, bestiality and homosexual conduct:

> 7. If a man or woman shall lye with any beast, or bruit creature, by carnall copulation, they shall surely be put to death; and the beast shall be slaine, and buried. *Lev.* 20:15, 16.
>
> 8. If a man lyeth with mankinde, as he lyeth with a woman, both of them have committed abomination, they both shall surely be put to death. *Lev.* 20:13.[32]

These Capital Laws were a part of the famous *Massachusetts Body of Laws and Liberties,* which outlined and declared the numerous rights and liberties of the colonists. There was thus no right of homosexual lifestyles. These laws were first printed and published in 1648. In 1697, the Province Law declared:

> *For avoiding of the detestable and abominable sin of buggery with man or beast, which is contrary to the very light of nature, it is to . . .be adjudged felony. . . under the pains of death.*[33]

6. The General Court of **Connecticut** adopted a list of twelve capital crimes, which were essentially based on the

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31 David Pulsifer, ed., *Records of the Colony of New Plymouth in New England,* (Boston: Wm. White, 1861), vol. 11, p. 12.

32 Wm. H. Whitmore, ed., *The Colonial Laws of Massachusetts* (Boston: Rockwell and Churchill, 1890), p. 55.

33 *Acts & Resolves of Massachusetts Bay,* (Boston, 1869), vol. 1, p. 297.

Massachusetts Bay Colony's Liberties of 1641. The law was readopted in a codification of 1650. The precept covering sodomy stated:

> If any man lies with mankind as he lies with a woman, both of them have committed abomination, they both shall surely be put to death. *Lev.* 20:13.[34]

The code also made idolatry, witchcraft, blasphemy, rape, bestiality, adultery, and kidnapping capital crimes, all supported by Bible references in support of the law.

7. In July of 1647, representatives of four towns met at Portsmouth, formed the government of the **Rhode Island Colony,** and drew up a body of laws, one of the earliest governmental codes passed by American colonists. Many of the laws were based upon the English statutes. Sodomy, buggery, rape, adultery, fornication, "and their accessaries" were listed together in this legal code, under the category of laws entitled "Touching Whoremongers." The 1647 Rhode Island statute stated:

> *Touching Whoremongers:* First of sodomy, which is forbidden by this present Assembly throughout the whole colony, and by sundry statutes of England 25 Hen. 6, 6; 5 Eliz. 17. It is a vile affection, whereby men given up thereto leave the natural use of women and burn in their lusts toward another, and so men with men work that which is unseemly, as that Doctor of the Gentiles [St. Paul] in his letter to the Romans once spake, i.27. The penalty concluded by that state under whose authority we are, is felony of death without remedy.[35]

The Rhode Island Colony revised its sodomy law in 1663. The new law adopted a wording similar to the current English buggery law. The law of 1663 declared:

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34 *The Code of 1650. . . Of the General Court of Connecticut,* Hartford, 1822, p. 21.

35 Wm. R. Staples, ed., *The Proceedings of the First General Assembly . . .of Providence Plantation. . . .,* Providence, 1817, pp. 31-32.

> Whosoever shall perpetrate and commit the Detestable and Abominable Crime of Sodomy, or Buggery, and be thereof Lawfully Convicted, shall suffer the Pains of Death, as in Cases of Felony, without benefit of Clergy.[36]

This law continued until 1798 when it was again revised.

8. In 1656, the **New Haven Colony** published a body of laws which generally followed the model of the Massachusetts Bay Colony's Body of Liberties of 1641. The New Haven sodomy statute however, specifically included Lesbianism among the crimes punishable by death:

> If any man layeth with mankinde, as a man lyeth with a woman, both of them have committed abomination, they both shall surely be put to death. Levit. 20:13. And if any woman change the naturall use into that which is against nature, as Rom. 1:26, she shall be liable to the same sentence, and punishment, or if any person, or persons, shall commit any other kinde of unnaturall and shamefull filthiness, called in Scripture the going after strange flesh, or other flesh than God alloweth, by carnall knowledge of another vessel than God in nature have appointed to become one flesh, . . . every such person shall be put to death.[37]

This New Haven law was based largely on a code drawn up by John Cotton in 1636.

9. In 1661 the laws of England were expressly adopted by the **Virginia** assembly, which made the English "buggery" law official in the colony. The death penalty was thus in force for this offense. The English "buggery" law was also regarded as in force in **Carolina** at this time. Buggery at this time covered all "carnal copulations against nature" (3 *Coke's Inst.* 58).

10. The **Duke of York** laws of 1665, closely followed New England precedent in their wording. They went in effect in

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36 *Acts and Laws of His Majesties Colony of Rhode Island*, Boston, 1719, p. 6.

37 J. Hammond Trumbull, *The True-Blue Laws of Connecticut and New Haven*, (Hartford: American Pub. Co., 1879), p. 201.

what became the colonies of New York, Pennsylvania and New Jersey. The sodomy provision read:

> If any man lyeth with mankind as he lyeth with a woman, they shall be put to Death, unless the one party were Forced or be under fourteen Years of age, in which Case he shall be punished at the Discretion of the Court of Assizes.[38]

This law, by executive order of Governor Edmund Andros, was again made operative in 1676. A representative assembly of **New Jersey**, which assembled for the first time in 1668, made "sodomy" and "buggery" capital offenses. The wording of the statute was almost identical to the "Duke's Laws" of New York.

11. Legislators of **New Hampshire** passed the colony's first capital laws in 1680, among which was the following sodomy statute:

> If any man lie with mankind as he lies with a woman; both of them have committed abomination; They both shall surely be put to death: unless one party were forced, or were under fourteen years of age. And all other Sodomitical filthiness shall be severely punished according to the nature of it.[39]

This law was copied almost word for word from the Plymouth laws of 1671.

12. The first assembly held in the Province of **Pennsylvania** under the proprietorship of William Penn in 1682, passed the following law against sodomy:

> If an person shall be Legally Convicted of the unnatural sin of Sodomy or joining with beasts, Such person shall be whipped, and forfeit one third of his or her estate, and work six months in the house of Correction, at hard labour.[40]

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38 George Straughton, ed., *Charter to William Penn, and Laws of the Province of Pennsylvania,* (Harrisburg, Pa., 1879), p. 14.

39 Albert S. Batchellor, ed., *Laws of New Hampshire . . .,* (Manchester, N.H., J.B. Clarke, 1904), vol. 1, pp. 11-13).

40 George Straughton, ed., *Charter to William Penn, and Laws of the Province of Pennsylvania,* (Harrisburg, Pa., 1879), p. 110.

This law was revised in 1700 to include castration and life imprisonment. But in 1718 the death penalty for "sodomy and buggery" was reinstated in Pennsylvania, probably because the prison sentence was ineffective and expensive to the colony. This revision brought Pennsylvania law into conformity with English statute and common law. The sodomy provision read:

> If any person or persons shall commit sodomy or buggery, or rape, or robbery . . . he or they . . .shall suffer as felons, according to the tenor, direction, form and effect of the several statutes in such cases respectively made and practiced in Great Britain.[41]

This law remained in effect until 1786.

13. After the Glorious Revolution in England in 1691, the colony of **New York** became a royal province. At that time the English "buggery" law, which provided for the death penalty, was regarded as in effect. This law continued in New York until changed in 1796.

14. The legislators of **South Carolina** included the text of the English "buggery" law and its death penalty into the South Carolina statute of 1712. A somewhat unusual measure since the English buggery law was usually assumed to be operative in the Southern Colonies. This 1712 buggery law remained in effect for one hundred and sixth-one years, when changed in 1873.

15. The **Delaware** Assembly passed a "sodomy" law in 1719, which was a copy of the Pennsylvania law of 1718, thus instituting the death penalty for the crime. This Delaware law remained in effect until 1826.

16. The **Georgia Colony** in 1732, was chartered as a private "trusteeship," with the English buggery statute regarded as in force. In 1777, the Georgia legislators affirmed that the

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41 Mitchell and Flanders, ed., *The Statutes at Large of Pennsylvania from 1682 to 1801* (Harrisburg: C. M. Busch, 1896), vol. 3, p. 202.

statutes of England were still in force, indicating the buggery law was earlier considered operative.

17. Blackstone's characterization of sodomy, as the *"infamous crime against nature,"* had become the basis for most American sodomy laws since the Revolutionary War. Thus many of the State statutes in the 1800's and early 1900's used language similar to that used By Blackstone. By 1868, 32 of the 37 States had laws which outlawed sodomy.

7. SOCIETY AND CASE HISTORY

1. The earliest case of a trial against a homosexual in America was that of a Frenchman, who was executed in 1566 by the Spanish military authorities in St. Augustine, Florida.

2. Around 1624-25, a ship's master, Richard Cornish, was executed in the Virginia Colony for having committed a homosexual attack on one of his stewards. The testimony and trial of the Cornish case are recorded in the surviving colonial Virginia records.[42]

3. In Governor **William Bradford's** history of Plymouth Plantation, in a chapter on events of 1642, he discusses how "wickedness" did that year "break forth." He writes of "the breaking out of sundry notorious sins" such as *"drunkenness and uncleanness, . . .but that which is worse, even sodomy and buggery (things fearful to name) have broke forth in this land oftener than once."* He states that for such acts "both men an women have been punished sharply."[43]

Among the causes of these outbreaks of "wickedness" in New England Bradford states that, "evils are more likely to be discovered here because the churches and magistrates are

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42 H. R. McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia,* (Richmond: Colonial Press, 1924).

43 William Bradford, *Of Plymouth Plantation,* ed., Samuel Eliot Morison (Knopf, N.Y., 1952), p. 316.

more watchful, and the population smaller." He also accuses profit-seeking traders of transporting to the New World any who "had the money to pay them," and so sending "unworthy persons."[44]

3. In 1646, John Winthrop, the first governor of Massachusetts Bay Colony, wrote of William Plaine who was tried for "being discovered to have used some unclean practices." And that "upon examination and testimony, it was found, that he had committed sodomy with two persons in England," and had "corrupted a great part of the youth" with similar practices in the Colony." Winthrop further writes, *"The magistrates and elders did all agree, that he ought to die, and gave divers reasons from the word of God."* The margin informs us that "he was executed at New Haven."[45]

In describing the offense Winthrop stated: "And indeed it was *horrendum facinus* [a dreadful crime], and he a monster in human shape, exceeding all human rules and examples that ever had been heard of, and it tended to the frustration of the ordinance of marriage and the hindering the generation of mankind."

4. Many of the American colonies also punished "sodomitical" (or sodom-like) practices—those "tending toward sodomy"— punished most often by whipping. In 1642 the Plymouth court cited two men for "lewd & sodomitical practices tending to sodomy" with each other, who were "censured to be whipped at the public place."[46]

5. The diary of Samuel Sewall recorded that on January 29, 1712, a grand jury, meeting at Charlestown, Massachusetts, found reason to arraign "Mingo, alias Cocke Negro, for forcible

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44 Bradford, p. 321-22.

45 John Winthrop, *History of New England from 1630 to 1649,* ed., James Savage, 2 vols. (Boston, Little, Brown Co., 1853, vol. 2, p. 324.

46 Shurtleff and Pulsifer, ed., *Records of the Colony of New Plymouth* (Boston: Wm. White, 1855), vol. 2, pp. 35-36.

Buggery."[47] Mingo, who was a slave of Wait Winthrop, a chief justice of Massachusetts, was apparently executed under the Massachusetts law of 1697, which provided death for "buggery."

6. While the various trials and executions of sodomites in early America served as a warning to those in society who might stray into this immoral vice, the strongest impact came from the ministers of the day. The preaching, writing and teaching of the clergy on not only the detestable nature of homosexuality but also of the required death penalty, kept the civil authorities within the requirements prescribed by both the Bible and the English common law.

7. When the Massachusetts Bay Colony encountered some cases of sodomy in 1642, the Governor, Richard Bellingham, wrote a letter to the theological authorities of Plymouth, asking their advice on how to punish "heinous offenses in point of uncleanness," which included a case of sodomy. Governor Bradford answered the Massachusetts governor, passing along to him the written opinions of three Plymouth theologians:

Rev. John Raynor wrote that "carnal knowledge of man or lying with man as with woman, was sodomy, to be punished with death." Raynor added that, "It seems also that this foul sin might be capital, though there was no penetration," but only contact and movement causing ejaculation. His authority is the Bible.[48] Rev. Ralph Partridge made a similar statement. Rev. Charles Chauncy, quoting the Bible, writes that "adultery, rape, abortion, incest, bestiality, sodomy, and all presumptuous sins are to be punished by death." He also reasons that if "unnatural lusts of men with men, or women with women be punished with death, then . . .natural lusts of men towards children under age are also to be punished."[49]

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47 *The Diary of Samuel Sewall, 1674-1729,* ed. by M. Halsey Thomas, 2 vols. (New York: Farrar, 1973), vol. 2, pp. 677-78.

48 Bradford, p. 404-05.

49 Bradford, p. 406-407.

8. In his sermon, the "Cry of Sodom," published in 1674, the Reverend Samuel Danforth drew an explicit parallel between the city of Sodom and the settlements of New England. Danforth warned New Englanders that their failure to punish by death such sins as sodomy and bestiality would bring God's vengeance on everyone. As a result, the early colonists lived with an ever-present fear that a just God would punish their entire society for the sins it allowed some to partake in. Rooting out sin was in effect a means of self-preservation, maintained William Bradford in his analysis of the outbreak of sodomy in 1642. Indeed, most historians will admit that the preservation, growth and blessings upon colonial America was nothing short of miraculous.

9. The Reverend John Cotton, who had been asked to draw up a legal code for Massachusetts Bay, had drafted a set of laws in which he included the death penalty for sixteen crimes including sodomy, proposing: *"Unnatural filthiness, to be punished with death, whether sodomy . . . or buggery."* The text of his code was later adopted in New Haven Colony.

10. In a classic Puritan sermon on a Christian's "Personal Calling," in 1701, Cotton Mather declared that one's worldly work kept one from "idleness," and from all "the sins of Sodom." America was greatly blessed of God for such ministers, as was His desire to do—*"I will give you pastors according to my heart, which shall feed you with understanding"* (Jer. 3:15).

11. Many civilized states have historically taken measures to prevent homosexuals from immigrating into their country. In 1947, the U.S. Senate undertook a comprehensive investigation of the immigration system. This investigation culminated in the release of a Judiciary Committee Report, which recommended the exclusion of "homosexuals and other sex perverts" from immigrating into the country. A bill was passed with a provision excluding "aliens with psychopathic personality or a mental defect," which was sufficiently broad to provide for the exclusion of homosexuals and sex perverts.

8. SODOMY AND THE MILITARY

1. U.S. Military regulations have for a long time prohibited servicemen from engaging in private consensual homosexual relations. Such activity in the military can be a court-martial offense as a violation of Article 125 of the Uniform Code of Military Justice (UCMJ). Article 125 states:

> (a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.
>
> (b) Any person found guilty of sodomy shall be punished as a court-martial offense.[50]

2. The military has a long tradition of aversion to the presence of homosexual personnel in its ranks. In early America soldiers were subject to the civil courts for prosecution of such acts as sodomy. Thus in 1660, the council of the New Netherlands recorded proceedings of a sodomy case of an indentured servant and a soldier. A plea of guilty was entered against Jan Quisthout van der Linde, the soldier charged with sodomy, on June 17, and the soldier's sentence was recorded on the same day:

> Jan Quisthout van der Linde is to be taken to the place of execution and there stripped of his arms, his sword to be broken at his feet, and he to be then tied in a sack and cast into the river and drowned until dead.[51]

The council also sentenced the servant boy, whom Quisthout committed sodomy upon, to be privately whipped.

3. The first military court-martial case for sodomy was during the American Revolution, when Lt. Frederick Gotthold Enslin, in George Washington's army, was dishonorably

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50 10 U.S.C.A. sec. 925, from 70A Statutes at Large 74, Aug. 10, 1956.

51 B. O'Callaghan, ed., *Calendar of Historical Manuscripts in the Office of the Secretary of State, Albany, N.Y.* (Albany: Weed, 1865), p. 211.

discharged for attempted sodomy on another soldier. The records show that Washington, in his general orders for March 10, 1778, endorsed the sentence of the court-martial:

> *His Excellency the Commander in Chief approves the sentence, and with Abhorrence and Detestation of Such Infamous Crimes orders Lieutt. Enslin to be drummed out of Camp tomorrow morning by all the drummers and Fifers in the Army never to return.*[52]

4. If military authorities discover a serviceman's homosexual acts, the military services require immediate processing for discharge of the offending individual. The prohibition of sodomy generally applies without consideration of a person's overall fitness for duty. Navy policy on known homosexuals says "Their prompt separation is essential." The Army also makes their discharge mandatory.

Only in the cases of homosexuals and drug traffickers is the decision to discharge not based on the merits of the case. For every other behavior warranting an undesirable discharge, the regulations in some individualized way provide that the service balance the misconduct against the weight of the serviceman's overall desirability to the service.

5. In the "Digest of Opinions" by the U.S. Judge Advocates General of the Armed Forces of 1959, is recorded that:

> *Sodomy is an offense involving moral turpitude, and necessarily applies to all subject to military law without regard to the individual's duty status.*[53]

6. The regulations and provisions of the Military Code have been continually upheld against contentions that they violate one's right to personal privacy or violate the First Amendment's prohibition of laws establishing a religion.[54]

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52 *The Writings of George Washington,* ed., by John C. Fitzpatrick (Washington, D.C.: U.S. Govt. Printing Office, 1934), vol. 2, p. 83-84.

53 Opinions of the Judge Advocates General of the Armed Forces, Vol. 8, No. 2, Sodomy, sec. 3.1.

9. THE SUBVERSIVE DEFENSE OF SODOMY

1. Homosexual conduct, before it had become openly practiced in modern times, was a subject that was never discussed and talked about. Homosexuality was perhaps the most taboo subject of all—so unmentionable that many Americans lived and died without ever hearing it. [55] In fact, it was not until the 1920's that the terms "homosexual" or "lesbian" became fairly common in American literature.

The reason for this openness and spread of homosexual conduct has been a subversive movement which has worked in the defense and promotion of the homosexual "lifestyle" in America, Canada, Europe and elsewhere. One of the legal battering rams of this subversive movement is the American Law Institute, which since its inception in 1923, has fallen into the control of the Jewish radical movement.

2. Until the 1960's, homosexual behavior was prohibited in all fifty states and the District of Columbia through some form of sodomy statute. Then in 1961, Illinois became the first state to adopt the American Law Institute's "Model Penal Code" provision which decriminalized adult, consensual, private, sexual conduct. In supporting its position, the American Law Institute (ALI) noted that such nations as France, Great Britain, Canada, Mexico, Italy, Denmark, and Sweden had repealed their sodomy statutes. The ALI also cited "scientific studies" that found homosexual conduct to be neither "unnatural" nor socially harmful.

At the same time, we saw Jewish radicalism instigate and promote the "gay rights movement." Organizations such as the *"Gay Liberation Front"* (GLF) and the *"Students for a Democratic Society,"* were started or heavily populated with

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54 57 *Corpus Juris Secundum,* "Military Justice," sec. 36, p. 240. Also see notes of decisions, 10 United States Code Annotated, sec. 925, "sodomy."

55 Mary Cable, *American Manners and Morals,* (American Heritage Pub. Co., N.Y., 1969), p. 235.

radical Jews such as Michael Brown, Bill Katzenberg, Susan Silverman, Paul Goodman and others. "The prototypical political reformer of GLF was Marty Robinson—the son of a Jewish doctor."[56] When the *"Gay Activists Alliance"* was formed in 1969, a lobbyist organization to "convince council members that it was moral to vote for gay rights legislation," they proceeded to "enlist the support of Jewish leaders" to aid in this cause.[57] Much of this 'gay rights movement' was prompted by a book written by Donald Cory in 1951, titled, *The Homosexual in America,* with a new and innovative topic—"applying civil rights ideas to the case of homosexuals." It was published by the Jewish publishing house of "Greenberg, the only house Cory could find that was willing to handle such controversial material."[58]

3. Using this new movement as an emotionally motivated activist and lobbyist group, the ALI proposal gained support in the 1970's causing legislators in twenty additional states to decriminalize homosexual conduct. However its efforts in the courts have been far less successful.

> *In general, statutes making sodomy a criminal offense have withstood an array of constitutional challenges and attacks.*[59]

It is all but unanimous that the right to privacy recognized under State and Federal Constitutions does not extend to acts of consensual sodomy between homosexual adults. In such cases there is no demonstrated connection between family, marriage, or procreation on the one hand and homosexual activity on the other. Thus there is no foundation for a right to engage in such activity even in the privacy of the home.[60]

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56 Toby Marotta, *The Politics of Homosexuality,* (Boston: Houghton Mifflin Co., 1981), p. 95.

57 Ibid, p. 201.

58 Ibid, p. 6.

59 *Wharton's Criminal Law,* 14th Edition, Vol. 3, 1980, sec. 295, p. 82. *American Jurisprudence,* 2nd ed., vol. 70A, "Sodomy," sec. 5, p. 1040.

60 70A Am. Jur. 2d., "Sodomy" sec. 7, citing *Bowers v. Hardwick,* supra.

Going back to the foundation of the law, the Bible, we find that God made no exceptions to the crime of sodomy based on what public opinion was or to rights of privacy. God made no provisos for personal "preferences" or distinctions between public and private sodomy. The sociological premise in the Bible is based on the law, and the law was quite plain and explicit. Thus no argument in support of homosexuality can be lawfully raised for God has condemned and prohibited that "lifestyle." And so it is with the attacks against all true moral precepts, they are but a direct attack and defiance against God and His law.

4. Laws can generally be classified as one of two types. Laws that are *mala prohibita* pertain to those acts made unlawful by positive enactment, but are otherwise innocent in nature. A law which is *mala in se* refers to an act that is evil in and of itself. Sodomy, which includes all manner of homosexual conduct, is *mala in se,* as are all precepts that are God ordained.

5. Jewish sociologists and psychologists since Sigmund Freud have diligently tried to justify homosexual conduct, to interpret the law and modify social thinking in favor of the vice. Thus we have the Jew Dr. George Weinberg asserting that *"the real psychological crisis in our culture remains male homophobia."*[61] This is but a way to get people to accept the "rights" of sodomites. But as Chief Justice Burger said: "To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching." (*Bowers v. Hardwick,* supra, p. 197).

6. The evidence is thus presented against the sodomite, the testimony from history reveals all ages have condemned his acts. The Bible prohibited his conduct in both the Old and New Testament. The law finds no foundations that allow the conduct. Society has never supported his acts. Thus the sodomite has no case for his defense — *"Thou art weighed in the balances, and art found wanting"* (Daniel 5:27).

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61 John J. McNeill, *The Church and the Homosexual,* (Sheed, 1976), p. 86.